

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 209 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI GANSHYAM LAXMANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AKSHAY H MEHTA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/03/98

ORAL JUDGEMENT

1. Heard Mr.A.H.Mehta,Ld.advocate for petitioner and Mr.A.J.Desai, Ld.APP for the respondent State.

2. The petitioner has challenged the legality and propriety of the order, dated 6.10.97 passed by the Ld.Sessions Judge, Surendranagar dated 15.10.97 in the proceedings of Cri.Revn.Appln.No.60/97.

3. Vide his order, the Ld.Sessions Judge has dismissed the revision application which was preferred to challenge the order of the Ld.JMFC dated 6.10.97 in the matter of Prohibition Case No.51/97 registered at Wadhwan PS, Dist.Surendranagar.

4. The petitioner claims to be the owner of autorickshaw which is being used to transport passengers between Wadhwan city and Surendranagar. As per the prosecution case the petitioner was detained by the Wadhwan Police on 27/9/97 near Limdi when the petitioner was carrying passengers in the subject autorickshaw. That on enquiry the police found that the passengers sitting in the autorickshaw possessed illicit liquor. That thereby prohibition case was filed against the said passengers and the petitioner under section 66B and 81(1) of the Bombay Prohibition Act and that the said autorickshaw was taken into custody as muddamal by police.

5. That on 30.9.97 the petitioner made an application to the court of Ld.JMFC, Wadhwan, Dist.Surendranagar requesting the court that the said autorickshaw being the only means to earn his livelihood temporary custody of the said autorickshaw pending the trial be given to him on appropriate condition. It appears that the Ld.JMFC vide order dated 6.10.97 rejected the application against which the petitioner preferred revision application No.60/97. However, vide order the Ld.Sessions Judge, Surendranagar rejected the said revision application.

6. On perusal of the impugned orders, it appears that according to the petitioner the petitioner purchased the said autorickshaw on 1.5.96. However, on account of his personal circumstances, the said vehicle could not be registered with the Regional Transport Authority in the name of the present petitioner. That the Lds.JMFC as well as Ld.Sessions Judge have taken the view that if the vehicle is not registered in the name of the present petitioner and is found to have been used for transport of illicit liquor it could not be returned by way of temporary custody to the petitioner, and hence, the revision application was also rejected.

7. It is pertinent to note that the petitioner has produced the sale certificate of autorickshaw issued by one A One Auto Industries. However, as the petitioner has not paid full consideration of the purchase value the said A One Auto Industries had not transferred the

registration of the said vehicle in the name of the petitioner. It is also necessary to note that except the said incident the police has failed to point out anyother antecedent of illegally carried out by the present petitioner either in violation of Prohibition Act or otherwise. That the petitioner being the member of downtrodden community has only means of livelihood to earn by plying the autorickshaw, and if the autorickshaw is kept unused without maintenance the value of the autorickshaw would be deteriorated and it would become useless. In view of the said facts and circumstances it would not be unjust or improper if temporary custody of said autorickshaw is given to the petitioner on appropriate terms and conditions.

8. On perusal of annexures produced by the petitioner along with the petition it appears that the said autorickshaw, detailed description of which is given at annexure "D", is approximately valued at Rs.45,000/-. That as per annexure "D" the autorickshaw has been delivered to the present petitioner on certain terms and conditions. The petitioner has also taken third party insurance of the said vehicle. That in view of said fact, if personal bond of the petitioner for the value of the autorickshaw is ordered to be taken and the petitioner is directed to produce the vehicle every fortnightly before the investigating officer along with other conditions temporary custody of the same could be given.

9. On the basis of above stated discussion the petition is allowed. The impugned order passed by the Ld.JMFC, Wadhwan, dated 6.10.97 in Prohibition Case No.51/97 and the Ld.Sessions Judge, dated 15.10.97 in Cri.Revn.Appln.No.60/97 are set aside and quashed. The custody of autorickshaw lying with the Wadhwan Police Station in the proceedings of Prohibition Cri.Reg.No.51/97 description of which is given in annexure "D" is ordered to be given to the petitioner by way of temporary custody on compliance of following terms and conditions:

(i) The petitioner shall get the vehicle registered with the concerned RTO office within four weeks from the date of receipt of this order.

(ii) The petitioner shall execute personal bond of Rs.50,000/- before the Court of Ld.JMFC, Wadhwan, Dist.Surendranagar and undertaking to the effect that the petitioner shall produce the autorickshaw description of which is given at annexure "D" to the petition as and

when called by either investigating agency or the court of Ld.JMFC.

(iii) The petitioner shall not transfer, assign or part with the possession of the said vehicle without prior permission of the trial court.

(iv) The petitioner shall not change or replace any spare parts from the said autorickshaw without prior permission of the trial court.

(v) The petitioner shall produce the said autorickshaw before the investigation officer on every 1st and 15th of English calendar month for inspection pending trial.

10. This order of entrusting interim custody shall be subject to final disposal of Criminal Case No.51/97 pending in the court of Ld.JMFC, Wadhwan, Dist.Surendranagar. Rule is made absolute accordingly. No costs. DS permitted.

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